

Act of 1864, ch. 109, held not to change practice whereby, if plaintiff in an action of tort fails to make out a case against one or more of the defendants, such defendants are entitled to a verdict at once before defence is gone into. *Brinkley v. Platt*, 40 Md. 531.

A defect in an affidavit made under sec. 43 of art. 37 of Code of 1860—see sec. 52—held not to be cured by act of 1864, ch. 109. *Ward v. Leitch*, 30 Md. 334.

This section referred to in construing sec. 3—see notes thereto. *South Baltimore, etc., Co. v. Muhlbach*, 69 Md. 401; *Bowie v. Bowie*, 77 Md. 312; *Biggs v. McCurley*, 76 Md. 411; *Whitridge v. Whitridge*, 76 Md. 76; *Robertson v. Mowell*, 66 Md. 532; *Hardy v. Chesapeake Bank*, 51 Md. 596; *First National Bank v. Eccleston*, 48 Md. 163 (dissenting opinion); *Graves v. Spedden*, 46 Md. 538; *Sanborn v. Lang*, 41 Md. 115; *Miller v. Motter*, 35 Md. 432; *Johnson v. Heald*, 33 Md. 368; *Schull v. Murray*, 32 Md. 17.

This section referred to in construing sec. 4—see notes thereto. *Davis v. State*, 38 Md. 45. (And see dissenting opinion, p. 57.)

As to the law prior to act of 1864, ch. 109 (evidence act), see *Bowman v. Little*, 101 Md. 319; *Semmes v. Worthington*, 38 Md. 324; *Downes v. Maryland and Delaware R. R. Co.*, 37 Md. 101; *Williams v. Brailsford*, 25 Md. 144; *Cunningham v. Dwyer*, 23 Md. 232.

Cited but not construed in *Gambrill v. Parker*, 31 Md. 5.

See sec. 6 and art. 23, sec. 166.

See notes to art. 16, sec. 183.

An. Code, sec. 2 1904, sec. 2. 1896, ch. 249.

2. No person engaged in, connected with or employed on a newspaper or journal shall be compelled to disclose, in any legal proceeding or trial or before any committee of the legislature or elsewhere, the source of any news or information procured or obtained by him for and published in the newspaper on and in which he is engaged, connected with or employed.

See art. 40 of the Declaration of Rights.

An. Code, sec. 3. 1904, sec. 3. 1888, sec. 2. 1864, ch. 109, sec. 2 1868, ch. 116. 1876, ch. 222. 1888, ch. 315. 1902, ch. 495. 1904, ch. 661.

3. In actions or proceedings by or against executors, administrators, heirs, devisees, legatees or distributees of a decedent as such, in which judgments or decrees may be rendered for or against them, and in proceedings by or against persons incompetent to testify by reason of mental disability, no party to the cause shall be allowed to testify as to any transaction had with, or statement made by the testator, intestate, ancestor or party so incompetent to testify, either personally or through an agent since dead, lunatic or insane, unless called to testify by the opposite party, or unless the testimony of such testator, intestate, ancestor or party incompetent to testify shall have already given in evidence, concerning the same transaction or statement, in the same cause, on his or her own behalf or on behalf of his or her representative in interest; nor shall it be competent, in any case, for any party to the cause who has been examined therein as a witness, to corroborate his testimony when impeached by proof of his own declaration or statement made to third persons out of the presence and hearing of the adverse party; provided, however, this section shall not apply to pending cases nor in anywise affect the present rights of litigants therein.

Incompetency of parties as to transactions, etc., with deceased.

The portion of this section disqualifying a party from testifying relative to transactions with or statements made by the deceased, applied; witness being competent, however, to testify to other facts. *Russell v. Carman*, 114 Md. 35; *Lowe v.*